

REMARKS/DISCUSSION OF ISSUES

By this Amendment, Applicant amends claims 3, 11 and 17, and adds new claims 19-24. Accordingly, claims 3, 6-8, 11, 14 and 17-24 are pending in the application.

Reexamination and reconsideration are respectfully requested.

CLAIM OBJECTIONS

The Office Action objects to claims 3, 6-8, 11, 14, 17 and 18 because of the phrase “try to.”

Applicant respectfully traverses these objections.

Applicant respectfully submits that the phrases in the claims recite exactly what is intended and are indeed positive features of the claims. In particular, in claim 7 for example, each NA monitors call control information on a corresponding communication line in accordance with a received telephone number to try to identify a data stream associated with a telephone call having the telephone number as a source or destination. A given NA absolutely does monitor a communication line, and it absolutely **tries to** identify the data stream, but in fact it may not **actually** identify the data stream for various reasons, including as an example, that another NA may identify the data stream first and then the NTC may transmit a message to the NA to cause the NA to stop trying to identify the data stream – as recited in claim 7.

Applicant respectfully submits that “trying to” positively recites features of the claims. Indeed, a very quick search revealed hundreds of presumably-valid U.S. patents with claims that recite “trying to” perform some operation, and literally thousands of other claims that recite “attempting to” perform some operation. Surely all of these claims in issued patents are not somehow defective?

Therefore, Applicant respectfully requests that the claim objections be withdrawn.

35 U.S.C. § 103

The Office Action rejects claims 3, 6, 11 and 14 under 35 U.S.C. § 103 over Bearden et al. U.S. Patent Application Publication 2004/0062204 ("Bearden") in view of Foti U.S. Patent 6,839,323 ("Foti").

At the outset, Applicant relies on at least on the following standards with regard to proper rejections on obviousness grounds. First, the Office Action must establish the level of ordinary skill in the art of invention. See M.P.E.P. §§ 2141(II)(C) and 2141.03. Also, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also KSR International Co. v. Teleflex Inc., 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). Furthermore, the prior art reference (or references when combined) must teach or suggest all of the claim features. "*All words in a claim must be considered in judging the patentability of that claim against the prior art.*" MPEP § 2143.03 (citing In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)).

Applicant respectfully traverses these rejections for at least the following reasons.

Claim 3

Among other things, the method of claim 3 includes transmitting a respective telephone number from a network troubleshooting center (NTC) to a plurality of network analyzers (NAs) monitoring communication lines through which Voice-over-Internet Protocol (VoIP) data streams are transmitted.

Applicant respectfully submits the combined cited art does not teach any method that includes this feature.

On page 3, lines 17-20, the Office Action fairly admits that Bearden "*did not expressly disclose the feature of transmitting information indicating a respective telephone number.*"

However, the Office Action further states that Foti discloses this feature and

that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bearden to include this feature to “*provide transmission efficiency in the network.*”

Applicant respectfully traverse the proposed modification of Bearden based on Foti for at least the following reasons.

As noted above, a rejection on obviousness grounds under 35 U.S.C. § 103 cannot be sustained by mere conclusory statements: instead there must be some articulated reason with some rational underpinning to support the legal conclusion of obviousness.

Applicant respectfully submits that the Office Action provides only a conclusory statement in support of the proposed modification, and not an articulated reason with some rational underpinning. In particular, the Office Action fails to explain how modifying Bearden so that a network troubleshooting center (NTC) transmits a respective telephone number to a plurality of network analyzers (NAs) monitoring communication lines through which Voice-over-Internet Protocol (VoIP) data streams are transmitted would “*provide transmission efficiency in the network*” or why this would have been recognized by one of ordinary skill in the art at the time of the invention. How modifying Bearden modifying Bearden so that a network troubleshooting center (NTC) transmits a respective telephone number to a plurality of network analyzers (NAs) monitoring communication lines through which Voice-over-Internet Protocol (VoIP) data streams are transmitted “*provide transmission efficiency in the network?*” Applicant respectfully submits that it wouldn’t.

Furthermore, Applicant respectfully submits that in fact there would be **no reason** to modify Bearden so that a network troubleshooting center (NTC) transmits a respective telephone number to a plurality of network analyzers (NAs) monitoring communication lines through which Voice-over-Internet Protocol (VoIP) data streams are transmitted, as each of Bearden’s endpoint devices 102 **monitors synthetic calls generated by that endpoint device itself** for the purpose of being monitored.

Furthermore Bearden’s endpoint devices 102 are only configured to monitor synthetic calls generated by that endpoint device itself for the purpose of being

monitored. How would these devices 102 even collect QOS for calls associated with a received telephone number? And where does Bearden or Foti even suggest collecting QOS data for calls associated with a telephone number communicated to a network analyzer?

So Applicant respectfully submit that there is no reason why anyone of ordinary skill in the art would at the time the invention was made have modified Bearden to transmit a respective telephone number from a network troubleshooting center (NTC) to a plurality of network analyzers (NAs) monitoring communication lines through which Voice-over-Internet Protocol (VoIP) data streams are transmitted – without resorting to the teachings of Applicant's own specification.

Applicant also notes that the Office Action fails to establish the level of skill in the art – as is required under M.P.E.P. §§ 2141(II)(C).

Therefore, for at least these reasons, Applicant respectfully submits that claim 3 is patentable over the cited art. Accordingly, Applicant respectfully requests that the rejection of claim 3 be withdrawn, and that claim 3 receive an early allowance.

Claim 6

Claim 4 depends from claim 6 and is deemed patentable for at least the reasons set forth above with respect to claim 6.

Claim 11

Among other things, the apparatus of claim 11 includes a network troubleshooting center (NTC) for transmitting a telephone number; and a plurality of network analyzers (NAs) for monitoring respectively corresponding communication lines through which Voice over Internet Protocol (VoIP) data streams are transmitted, wherein, after receiving the telephone number, the NAs collect quality of service data for data streams associated with a telephone call.

For similar reasons to those set forth above with respect to claim 3, Applicant respectfully submits that claim 11 is patentable over the cited art. Accordingly, Applicant respectfully requests that the rejection of claim 11 be withdrawn, and that claim 9 receive an early allowance.

Claim 14

Claim 14 depends from claim 11 and is deemed patentable for at least the reasons set forth above with respect to claim 11.

NEW CLAIMS 19-24

New claims 19-24 depend variously from claims 3 and 11 and are deemed patentable for at least the reasons set forth above with respect to claims 3 and 11, and for other novel features recited therein.

CONCLUSION

In view of the foregoing explanations, Applicant respectfully requests that the Examiner reconsider and reexamine the present application, allow claims 3, 6-8, 11, 14 and 17-24 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283.0720 to discuss these matters.

Respectfully submitted,

VOLENTINE & WHITT

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By: /Kenneth D. Springer/
Kenneth D. Springer
Registration No. 39,843

VOLENTINE & WHITT
One Freedom Square
11951 Freedom Drive, Suite 1260
Reston, Virginia 20190
Telephone No.: (571) 283.0724
Facsimile No.: (571) 283.0740